

## Federal Acquisition Regulation

## 12.203

(vii) Is awarded to an entity that provides similar services to the general public under terms and conditions similar to those in the contract or task order.

(2) In exercising the authority specified in paragraph (g)(1) of this section, the contracting officer may tailor paragraph (a) of the clause at FAR 52.212-4 as may be necessary to ensure the contract's remedies adequately protect the Government's interests.

[60 FR 48241, Sept. 18, 1995]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §12.102, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.fdsys.gov](http://www.fdsys.gov).

### **12.103 Commercially available off-the-shelf (COTS) items.**

COTS items are defined in 2.101. Unless indicated otherwise, all of the policies that apply to commercial items also apply to COTS. Section 12.505 lists the laws that are not applicable to COTS (in addition to 12.503 and 12.504); the components test of the Buy American Act, and the two recovered materials certifications in Subpart 23.4, do not apply to COTS.

[74 2721, Jan. 15, 2009]

## **Subpart 12.2—Special Requirements for the Acquisition of Commercial Items**

### **12.201 General.**

Public Law 103-355 establishes special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

### **12.202 Market research and description of agency need.**

(a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see part 11), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

(c) Follow the procedures in subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions.

(d) Requirements documents for electronic and information technology must comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see subpart 39.2).

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with 11.002(g).

[60 FR 48241, Sept. 18, 1995, as amended at 62 FR 264, Jan. 2, 1997; 66 FR 20897, Apr. 25, 2001; 74 FR 65607, Dec. 10, 2009]

### **12.203 Procedures for solicitation, evaluation, and award.**

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in part 13, Simplified Acquisition Procedures; part 14, Sealed Bidding; or part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in 12.603. For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$6.5 million (\$12 million for acquisitions as described in 13.500(e)), including options, contracting activities shall employ the